

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re DAVID MCINTYRE,  
Petitioner

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NO. 1:15-cv-1100

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**DEFENDANTS' NOTICE OF REMOVAL**

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To the Honorable Judge of the United States District Court for the Western District of Texas,  
Austin, Division:

PLEASE TAKE NOTICE THAT pursuant to Sections 1331, 1441, and 1446 of 28 United States Code, Defendants/Respondents ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWART, CHARLES McCORMICK, TOM CLARK AND JANE/JOHN DOE 1, 2, and 3 (hereinafter referred to as "Defendants"), hereby remove this action from the 419th Judicial District Court of Travis County, Texas to the United States District Court for the Western District of Texas Austin Division. The grounds for removal are as follows:

**I.**  
**PROCEDURAL HISTORY**

1. On October 20, 2015, Plaintiff DAVID MCINTYRE ("Plaintiff McIntyre") filed its First Amended Original Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary Injunction in the 419th Judicial District Court, Travis County, Texas styled *In re David McIntyre*. The state court assigned Cause Number D-1-GN-15-003714 which is currently pending in state court. The Defendants were served on October 30, 2015.

2. On November 11, 2015, Plaintiff McIntyre filed his Second Original Petition for Declaratory Judgment and Application for Temporary Restraining Order and Temporary Injunction.

3. On November 17, 2015 Defendants filed a Plea to the Jurisdiction and a hearing was held on November 25, 2015.

4. At that hearing the Court ordered that Plaintiff McIntyre would be allowed to re-plead no later than by noon on November 25, 2015 in order to avoid dismissal. Plaintiff McIntyre's counsel served the "Third Amended Original Petition for Declaratory Judgment and Application for Temporary and Permanent Injunctions" on Defendants prior to the deadline set by this Court.

5. On November 29, 2015, Plaintiffs served their "Fourth Amended Original Petition for Declaratory Judgment, Damages under 42 U.S.C. §1983 for the Deprivation of Constitutional Rights, and Application for Temporary and Permanent Injunctions." This version added Plaintiff's counsel as a party and alleges First Amendment retaliation against Plaintiff's counsel for her public comments on Defendants' actions and her role in representing Plaintiff McIntyre in the current lawsuit.

6. On December 3, 2015, Plaintiffs served their "Fifth Amended Original Petition for Declaratory Judgment, Damages under 42 U.S.C. § 1983 for the Deprivation of Constitutional Rights, and Application for Temporary and Permanent Injunctions." This version expands Plaintiff Connor's claim of retaliation to include an allegation relating to a recall election petition to remove Plaintiff Connor from her position as President of the Lost Creek Neighborhood Association Board.

7. This claim became removable when Plaintiffs commenced the action on November 29, 2015, alleging claims under 42 U.S.C. §1983, and the First and Fourteenth Amendments.

8. Attached as **Exhibit “A”** to this notice are true and correct copies of all pleadings, process, and other filings in the state court action as of December 3, 2015, as required by Section 1441(a) 28 of the United States Code because this district and division embrace the place where the removed action is pending.

9. Removal is proper because Plaintiffs’ lawsuit asserts federal claims arising under 42 U.S.C. §1983 and the First and Fourteenth Amendments.

## **II.**

### **THIS COURT POSSESSES JURISDICTION BASED ON SECTION 42 U.S.C. §1983**

10. Except as otherwise provided by Act of Congress, a state court action may be removed to federal court if the federal court has original jurisdiction over the action and the notice of removal is timely. 28 U.S.C. §1441(a).

11. Removal is proper because Plaintiffs’ suit involves a federal question. 28 U.S.C. §§1331, 1441(a); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757-58 (6th Cir. 2000); *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiffs’ claims rely on 42 U.S.C. §1983. By filing this Notice of Removal, Defendants do not waive any defense that may be available to them or concede that Plaintiffs is entitled to any of the relief or damages claimed.

12. This Court has supplemental jurisdiction of any purported State law claim as it is the same case and controversy as the alleged United States Constitutional claims contained within Plaintiff’s Original Petition under sections 1367 and 1447 of 28 United States Code.

13. This Notice of Removal is being filed within the thirty (30) days of service of Plaintiff’s federal claims as required by 28 United States Code §1446(b).

14. This suit is removed to the District and division of the United States Court where the action is pending: the Western District of Texas, Austin Division.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure on this 4th day of December, 2015, to the following:

Madeline Connor  
Attorney at Law  
P.O. Box 161962  
Austin, Texas 78716-1962

**E-FILE NOTIFICATION**  
**EMAIL: [mgbconnor@yahoo.com](mailto:mgbconnor@yahoo.com)**

Natalie Scott  
COATS ROSE  
901 S. Mopac Expressway  
Bldg. 1, Suite 400  
Austin, Texas 78746

**E-FILE NOTIFICATION**  
**EMAIL: [NScott@coatsrose.com](mailto:NScott@coatsrose.com)**

  
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SCOTT M. TSCHIRHART

15. The Defendants will file promptly a copy of this Notice of Removal with the clerk of the state court where the action has been pending.

**III.**  
**CONSENT OF SERVED DEFENDANTS**

16. Defendants are the only party Defendants, have accepted service and consent to the removal of this case to the United States District Court as evidenced by the signature of their counsel below.

WHEREFORE, PREMISES CONSIDERED, Defendants, in conformance with the requirements set forth in Section 1446 of 28 United States Code and with the consent of the party Defendants, remove this action for trial from the 419<sup>th</sup> Judicial District Court of Travis County, Texas to this Court, and for such further relief to which Defendants are justly entitled.

SIGNED this 4th day of December, 2015.

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BY: \_\_\_\_\_

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State Bar No. 24056222  
SCOTT M. TSCHIRHART  
State Bar No. 24013655  
ATTORNEYS FOR DEFENDANTS

**INDEX**

- EXHIBIT “A”** True and correct copies of all pleading, process, and other filings in the state court action as of December 3, 2015.
- EXHIBIT “B”** Identity of Parties and Counsel